

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**ANSWER**

TOLENTINO VELASQUEZ,

Plaintiff,

07 Civ. 6367 (CLB)(LMS)

-against-

TOWN/VILLAGE OF MOUNT KISCO, New York, the  
TOWN OF BEDFORD, New York and John Doe, individually,  
Defendants.

-----X

For the answer to the complaint of the plaintiff in the above entitled case,  
defendant TOWN/VILLAGE OF MOUNT KISCO, by its attorneys, SANTANGELO  
RANDAZZO & MANGONE LLP, say:

**NATURE OF ACTION**

1. The allegations contained in paragraph "1" of the complaint constitute conclusions of law to which defendant makes no answer except to demand strict proof thereof and respectfully refers any and all questions of law to this Honorable Court. Further, defendant denies any conduct giving rise to a cause of action pursuant to enumerated statutes and Amendments.

**JURISDICTION**

2. The allegations contained in paragraph "2" of the complaint constitute conclusions of law to which defendant makes no answer except to demand strict proof thereof and respectfully refers any and all questions of law to this Honorable Court.

**THE PARTIES**

3. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "3" of plaintiff's complaint.

4. Defendant admits the allegations contained in paragraph "4" of the plaintiff's complaint.

6. Defendant admits the allegations contained in paragraph "6" of the plaintiff's complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "7" of plaintiff's complaint.

#### **THE FACTS**

8. Defendant denies the allegations contained in paragraph "8" of the plaintiff's complaint.

9. Defendant denies the allegations contained in paragraph "9" of the plaintiff's complaint.

10. Defendant denies the allegations contained in paragraph "10" of the plaintiff's complaint.

11. Defendant denies the allegations contained in paragraph "11" of the plaintiff's complaint.

12. Defendant denies the allegations contained in paragraph "12" of the plaintiff's complaint.

#### **ANSWERING A FIRST CLAIM**

13. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-12 of this Answer with the same force and effect as if set forth more fully at length herein.

14. Defendant denies the allegations contained in paragraph "14" of the plaintiff's complaint.

**ANSWERING A SECOND CLAIM**

15. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-12 of this Answer with the same force and effect as if set forth more fully at length herein.

16. Defendant denies the allegations contained in paragraph "16" of the plaintiff's complaint.

**ANSWERING A THIRD CLAIM**

17. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-12 of this Answer with the same force and effect as if set forth more fully at length herein.

18. Defendant denies the allegations contained in paragraph "18" of the plaintiff's complaint.

**ANSWERING A FOURTH CLAIM**

19. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-12 of this Answer with the same force and effect as if set forth more fully at length herein.

20. Defendant denies the allegations contained in paragraph "20" of the plaintiff's complaint.

**ANSWERING A FIFTH CLAIM**

21. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-12 of this Answer with the same force and effect as if set forth more fully at length herein.

22. Defendant denies the allegations contained in paragraph "22" of the plaintiff's complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

23. Any conduct which is alleged by plaintiff is *de minimis* and insubstantial and as such the allegations fail to establish a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

24. Any harm which came to plaintiff was a direct and proximate result of his own actions.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

25. The plaintiff's claim for damages, if any, are to be strictly governed by the Civil Rights Act of 1991 (42 U.S.C. Section 1981a).

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

26. Plaintiff has failed to allege that any harm which they may have suffered occurred as a result of a policy and/or custom established by the Town/Village of Mount Kisco, and thus the action against the Town/Village must be dismissed.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

27. Insofar as plaintiff seeks to impose liability to defendant Town/Village of Mount Kisco simply because it is alleged to have employed one or more constitutional tortfeasors, this action should be dismissed since the doctrine of *respondeat superior* is not available in an action brought pursuant to 42 U.S.C. Section 1983.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

28. The complaint fails to state a claim upon which relief can be granted.

**WHEREFORE**, the defendant prays judgment that the complaint of the plaintiff be dismissed, together with the costs and disbursements of this action and attorney's fees awarded to defendant.

Dated: Hawthorne, New York  
August 9, 2007

Yours, etc.,

SANTANGELO RANDAZZO & MANGONE LLP

By: 

James A. Randazzo(0156)

(Attorneys for Defendants-Town/Village of  
Mount Kisco

151 Broadway

Hawthorne, New York 10532

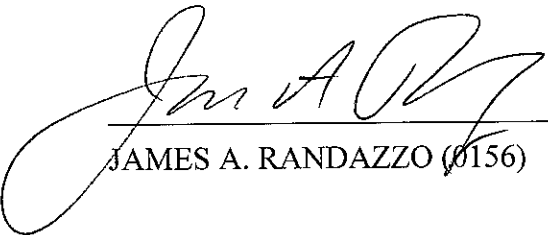
(914) 741-2929

TO: LOVETT & GOULD, LLP  
Attorneys for Plaintiff  
222 Bloomingdale Road  
White Plains, New York 10605  
(914) 428-8401

**CERTIFICATE OF SERVICE**

I, JAMES A. RANDAZZO, hereby certify that on August 9, 2007, I served the within ANSWER upon all parties, by mailing a copy thereof, postage prepaid, the address as provided to defendant by notification from this Court:

LOVETT & GOULD, LLP  
Attorneys for Plaintiff  
222 Bloomingdale Road  
White Plains, New York 10605  
(914) 428-8401

  
JAMES A. RANDAZZO (0156)